

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

MASTEC NORTH AMERICA, INC.  
d/b/a MASTEC ADVANCED  
TECHNOLOGIES<sup>1[1]</sup>

Employer

and

Case 12-RC-9197

LOCAL UNION #728, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS

Petitioner

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, MasTec North America, Inc., d/b/a MasTec Advanced Technologies, is in the business of servicing, installing, and upgrading residential and business DirecTV satellite systems. The employees at the Employer's Fort Pierce facility include apprentice field technicians, lead field technicians, field technicians, warehouse technicians, customer service representatives, a routing employee, and a payroll clerk.

On June 15, 2006, the Petitioner, Local Union #728, International Brotherhood of Electrical Workers, filed a petition with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, seeking to represent installers/technicians and warehouse employees (field and warehouse technicians). On June 27, 2006, a hearing officer of the Board held a hearing and, at that hearing, the parties stipulated that any unit found appropriate by the Regional Director should include all full-time and regular part-time field technicians, apprentice field technicians, and lead field technicians, and exclude all customer service representatives,

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<sup>1[1]</sup> The name of the Employer appearing on the petition has been corrected to reflect the Employer's complete name.

dispatchers, routing employees, payroll clerks, guards, and supervisors as defined in the Act.

The Employer and Petitioner filed briefs with me.

The sole issue before me is whether the petitioned-for unit, of all full-time and regular part-time warehouse technicians together with the field technicians, apprentice field technicians, and lead field technicians, constitutes an appropriate unit for purposes of collective bargaining.

The Employer contends, contrary to the Petitioner, that the only appropriate unit includes all apprentice field technicians (8), lead field technicians (6), and field technicians (32), but no warehouse technicians, of which there are two.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the unit sought by the Petitioner is an appropriate unit.

Accordingly, I am directing an election in a unit including all full-time and regular part-time warehouse technicians, apprentice field technicians, lead field technicians, and field technicians, but excluding all customer service representatives, dispatchers, routing employees, payroll clerks, guards, and supervisors as defined in the Act. There are approximately 48 employees in the unit found appropriate herein.

In the discussion below, I will first present an overview of the facts. Then, I will analyze the facts and set forth the reasons supporting my conclusions as to the disputed job classification.

## **OVERVIEW OF THE FACTS**

### **The Fort Pierce Operation**

Senior Tech Supervisor Ray Mulligan oversees the Employer's operation in Ft. Pierce. Those who directly report to the Senior Tech Supervisor are: Tech Support Supervisor John Gualtieri, Office Supervisor Catrice Cogdell, and three Field Supervisors. It appears that Warehouse Supervisor Jeremy Ellis, who is in charge of the warehouse technicians, reports

directly to both the Senior Tech Supervisor and the Tech Support Supervisor. The Office Supervisor is in charge of the routers, payroll employees, and customer service representatives. The Field Supervisors are in charge of the field technicians.

The Employer's Ft. Pierce warehouse and offices are housed in a single building. The warehouse is separated from the offices by a door. The equipment used to service customers is stored in a locked caged area within the warehouse. Only the Warehouse Supervisor and warehouse technicians have access to that cage. The door from the warehouse leads to a common area breezeway in the office area where the router works. Off the breezeway, there are two separate rooms in the office area for supervisors and office employees. The field technicians spend most of their time in the field.

## **Duties of Employees**

### **Field Technicians**

The field technicians provide satellite dish service by installing satellite TV systems and equipment, verifying system performance, and maintaining records. They perform an inventory of the equipment they have, place orders for the equipment they need and verify the receipt of such equipment by signing for it. The field technicians also coordinate schedules with customers. They then drive to customer locations in company vans. They service customers by resolving concerns and answering questions. They then maintain records of such services. They also perform customer service duties by listening to customer problems, solving those problems, and answering questions.

When the field technicians need more pieces of equipment to perform their work, they go to the warehouse, generally twice a week, to pick up this equipment. They order equipment, such as receivers, dishes, wiring, fittings, and multi-switches, at the warehouse.

## **Warehouse Technicians**

The warehouse technicians unload equipment from trucks with forklifts. The equipment arrives in pallets, and the warehouse technicians scan each individual piece. They are responsible for the packing slips and bills of lading. They store the equipment on shelves in the warehouse. They also maintain inventory control. As noted above, the field technicians enter the Fort Pierce facility about twice a week to pick up equipment they need to complete installations. They approach the warehouse technicians and tell them what is needed. The warehouse technicians or Warehouse Supervisor convey equipment from storage, scan that equipment, and then issue it to the field technicians. The field technicians sign off on a document which shows the equipment provided.

## **Office Employees**

The **customer service representatives**, who work in one of the rooms in the office area, answer customer calls.<sup>2[2]</sup> They assist customers with their questions. They may also provide support to the field technicians by helping them get through to a customer when the technicians call for such assistance. They do not handle or deal with paperwork such as work orders. Instead, according to the Senior Tech Supervisor, “Their primary job is phone work, computer work.”

The one **router** apparently also functions as a local office administrative assistant. According to a job posting/description, the router/local office administrative assistant processes new hire paperwork, files confidential records, performs “tech counts”, and routes a specific number of jobs to techs on a daily basis. As a router, this employee prepares daily work orders for the field technicians, based on their experience, proximity of the work, and number of points assigned to each job. There is no direct communication between the field technicians and the

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<sup>2[2]</sup> Customer service representatives are apparently also referred to as “dispatchers.”

router. Instead the routes are prepared based on work orders and other data available to the router, and then posted electronically on a website.

There is one **payroll clerk** (apparently also referred to as the “payroll administrator” or “payroll coordinator”) at the Ft. Pierce facility. According to a job description, the payroll clerk “will process payroll for the technicians, which will include scanning and verifying work orders for accuracy, entering data into an Oracle based data system. Other payroll responsibilities will include data entry for clerical/administrative staff.”

### **Wages, Hours and Working Conditions**

Warehouse technicians, customer service representatives, and the router are hourly paid, while the field technicians are paid on a piece rate basis.<sup>3[3]</sup> The starting wage rate for warehouse technicians is \$12 per hour. The field technicians are broken down into three categories: apprentice technician, regular field technician, and lead technician. They are all paid by piece rate based on the equipment installed or the job performed; however, each type of field technician’s pay rate is different. The field technicians progress within the different categories in order to increase their pay. The Senior Tech supervisor estimated that on average field technicians earn about 50 percent more than warehouse technicians. The minimum amount earned by a field technician is the minimum wage established by law. Other employees punch a time clock, but field technicians, who typically work away from the Employer’s facility, do not. All employees receive the same health benefits, vacation, and holidays. All employees apparently also wear the same company shirt while working. The warehouse employees are paid their hourly rate of pay while on vacation and on holidays while the field technicians earn a fixed rate of \$18.00 an hour for vacations and holidays, regardless of what they usually earn under the piece rate system.

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<sup>3[3]</sup> The record does not reflect the pay rate of the payroll clerk.

Field technicians and warehouse technicians are required to work on Saturdays. The warehouse technicians work a set schedule, although that schedule changes. The field technicians start work at 7:00 a.m. and work until they finish the jobs listed on their daily work orders.

The Employer has issued cellular phones to the field technicians, but not to the warehouse technicians.

The Employer holds some meetings for the field technicians which warehouse technicians attend. The Employer also holds some meetings attended by those who work at the Ft. Pierce facility which the field technicians do not attend.

### **Education, Training, and other Job Requirements**

There is no formal education required for the hiring of warehouse technicians or field technicians. According to a job posting, a router applicant is required to have “intermediate PC skills” but “STRONG EXCEL skills.” According to a job description, the payroll position requires the ability to type 50 words per minute, with “[e]xperience in Word and Excel a must.”

When hired, the warehouse technicians receive forklift and safety training. When hired, the field technicians receive training concerning safety, installations, and customer service. Following this initial training, the field technicians are trained out in the field for one to two weeks. Both field technicians and warehouse technicians are required to be able to lift 50 pounds.

### **Interchange and Contact**

The evidence shows that there are no temporary transfers between warehouse technicians and field technicians; however, three field technicians have permanently transferred to the warehouse during the past 4 years. They were provided with forklift training when they

transferred. At least one customer service representative has permanently transferred to the warehouse as well, although the record does not reflect when or how many of these transfers have occurred.

There is no evidence that any of the employees who work in the office area other than the customer service representatives have any contact with the field technicians while performing work duties. The record does not reflect how often customer service representatives interact with the field technicians by telephone, which is apparently the only type of interaction between these two groups.

On the other hand, the field technicians go into the warehouse twice a week to request and pick up needed equipment from the warehouse technicians. The warehouse technicians scan the items needed and issue them to the field technicians. The field technicians then sign a document showing the items received.

## **ANALYSIS**

In order for a unit to be a unit appropriate for the purposes of collective bargaining within the meaning of the Act, the unit need not be the only appropriate unit or the most appropriate unit; it need only be an appropriate unit. Barron Heating and Air Conditioning, Inc., 343 NLRB No. 58, slip op. at 3 (2004), citing American Hosp. Ass'n v. NLRB, 499 U.S. 606, 610 (1991); Overnite Transportation Co., 322 NLRB 723 (1996); P.J. Dick Contracting, Inc., 290 NLRB 150 (1988); and Morand Bros. Beverage, 91 NLRB 409, 418 (1950), *enfd.*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit. If the petitioned-for unit is an appropriate unit, the inquiry ends. If it is not

an appropriate unit, the Board then examines whether an alternative unit suggested by the parties or another unit not suggested by the parties is appropriate.

In determining whether employees in a petitioned-for unit share a community of interest, the Board looks to criteria such as common supervision, similarity in the employees' skills and functions, interchange and contact among employees, the degree of functional integration in the Employer's operation, similarity of working conditions, and similarity of wages and fringe benefits. See Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962).

Based on the evidence before me, I find the petitioned-for unit to be an appropriate one. See Harron Communications, Inc., 308 NLRB 62 (1992) (unit of cable television technicians and installers, cable converter repairperson and warehouse employee). The evidence in the instant matter shows that the warehouse employees and the field technicians share a community of interest. The primary function of the warehouse technicians is to provide support to the field technicians. Both field technicians and warehouse technicians work with and are knowledgeable regarding the equipment used out in the field. The field technicians go into the warehouse twice a week to request and pick up the equipment they need from the warehouse technicians. The warehouse technicians scan the items needed and issue them to the field technicians. The field technicians then sign a document showing the items received. Moreover, the warehouse technicians may give the field technicians assistance concerning the equipment when there is a matter in question. The warehouse and field technicians together also attend meetings held by management. There is no formal education required for the hiring of warehouse technicians or field technicians, but both groups are required to be able to lift items weighing 50 pounds. Three field technicians have permanently transferred to the warehouse. Moreover, while their pay,



hours, and immediate supervision vary, they share the same vacation, holiday, and health benefits, as well as uniforms.

Additionally, the warehouse technicians perform duties similar to those of employees found to be plant clericals, indicating that they share a community of interest with the field technicians. For instance, the jobs of warehouse technicians in the instant case are similar to those of the “Material Take-Off” employees in Brown & Root, Inc., 314 NLRB 19, 23 (1994). In Brown & Root, the Board held that certain Material Take-Off employees were plant clericals since their primary functions of ordering construction materials and equipment and dispersing them to craft employees were intimately connected to the construction process and required regular and substantial work contacts with unit employees. As plant clericals, they were included in the unit of construction and maintenance employees, while office clericals were excluded. The warehouse technicians in the instant case also work with materials and equipment to help in the function of the Employer’s business and have regular contact with the field technicians. Similarly, in International General Electric, S.A., Inc., 117 NLRB 1571, 1574 (1957), the “storekeepers” who worked in a warehouse were found to be plant clerical employees and were included in a unit of service, repair, and warehouse employees.

While the Employer suggests in its brief that warehouse technicians would more appropriately be included in a unit with employees other than the field technicians, such as customer service representatives and the router, the record does not support this contention. The customer service representatives, router, and payroll clerk all work in the office, separate from the warehouse, under a separate single supervisor. The record reflects no work-related contact between the office employees and the warehouse employees, apart from some meetings. The employees who work in the office are more in the nature of office clerical employees. In this

regard, in Harron Communications, the Board denied a request for review of a decision in which it was found that customer service representatives who performed distinct duties from those of installers and technicians, using the computers and the telephone, were office clericals and that they were properly excluded from the unit of installers, technicians and a warehouse employee. 308 NLRB at 62-63. In the present case, the payroll clerk and perhaps to a lesser extent, the routing employee/administrative assistant, like the customer service representatives, appear to be more in the nature of office clerical employees.

In the instant case, the evidence reveals that those who work in the office, who have been excluded from the unit of field technicians by agreement of the parties, are distinct from the warehouse technicians. The customer service representatives, router, and payroll clerk are physically separated from the warehouse area, and do not interact with warehouse employees in the performance of their normal duties. Furthermore, those who work in the office area perform duties that are distinct from those of the warehouse and field technicians, and certain office skills are required of them that are not required of the field or warehouse technicians. On the other hand, the warehouse technicians and field technicians both work with the same equipment – that being the equipment used out in the field. There is no evidence showing that those in the office area work with such equipment at all. Thus, the evidence shows that warehouse employees share a closer community of interest with field technicians than with those who work in the office area, and that the field technicians and warehouse technicians are appropriately included in the same unit.<sup>4[4]</sup>

## **CONCLUSION AND FINDINGS**

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<sup>4[4]</sup> I further note that in an election agreement in Case 12-RC-9196, approved on May 17, 2006, the Employer stipulated to the appropriateness of a unit like the one found appropriate here, but at its Tampa location.

Based upon the entire record in this matter<sup>5[5]</sup> and in accordance with the discussion above, I conclude and find as follows:

- A. The hearing officer's rulings are free from prejudicial error and are affirmed.
- B. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction in this case.<sup>6[6]</sup>
- C. The Petitioner claims to represent certain employees of the Employer.
- D. A question affecting commerce exists concerning the Representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- E. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field technicians, apprentice field technicians, lead field technicians, and warehouse employees; **excluding** customer service representatives, dispatchers, routing employees, payroll clerks, guards and supervisors<sup>7[7]</sup> as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on the question of whether or not they wish to be represented for purposes of collective bargaining by Local Union #728, International Brotherhood of Electrical Workers. The date, time, and place of the election

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<sup>5[5]</sup> Pursuant to an order of the hearing officer, the Employer produced three documents (job descriptions) to the Petitioner after the hearing closed, and those are admitted into evidence, as requested by the Petitioner and in the absence of an objection by the Employer.

<sup>6[6]</sup> The Employer is a Florida corporation with an office and place of business in Ft. Pierce, Florida, where it is engaged in the installation of satellite television services. During the past 12 months, the Employer, in conducting its business operations described above, purchased and received at its Ft. Pierce, Florida, facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

<sup>7[7]</sup> The parties stipulated that the Operations Manager, Senior Tech Supervisor, Field Supervisors, Warehouse Supervisor, Office Supervisor, and Tech Support Supervisor are supervisors within the meaning of the Act.

will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before **August 3, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to all parties to the election, please furnish a total of **two** copies.<sup>8[8]</sup> If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the Election Notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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<sup>8[8]</sup> The list may be submitted by facsimile transmission to (813) 228-2874, or electronically to [Region12@nrlb.gov](mailto:Region12@nrlb.gov), as well as by hard copy. Only one copy should be submitted if the list is sent electronically or by facsimile.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **August 10, 2006**. The request may not be filed by facsimile.<sup>9[9]</sup>

Dated at Tampa, Florida, this 27<sup>th</sup> day of July, 2006.

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/s/[Rochelle Kentove]  
Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Blvd., Suite 530  
Tampa, FL 33602-5824

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<sup>9[9]</sup> In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board's office in Washington, D.C. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlrb.gov](http://www.nlrb.gov).